



**CITY OF SAN DIEGO
M E M O R A N D U M**

DATE: September 7, 2010

TO: City Attorney Jan Goldsmith

FROM: Council President Pro Tem Kevin L. Faulconer and
Councilmember Carl DeMaio

SUBJECT: Triggering the Sales Tax if Approved by Voters

As you are aware, the ballot measure to increase the sales tax (Proposition D) requires that 10 conditions are met before the tax is triggered. The extent of the Mayor's ability as it relates to providing the City Auditor with information used to certify the conditions seems unclear and is the subject of debate. The ballot language states:

"The independent City Auditor shall review the documentation from the [Mayor] and any other information necessary to determine whether the reform measures have been met."

We respectfully request that you provide a legal opinion on the following:

- 1) Does the Mayor have the authority to withhold information from the City Auditor?
- 2) If so, would withholding that information permanently delay the implementation of the half-cent sales tax (if approved by voters in November)?
- 3) Or, could another party forward similar information to the City Auditor, which he then could use to certify a condition?
- 4) Who has the authority for each condition to forward information to the City Auditor?
- 5) What is the Mayor's veto power as it relates to each of the conditions, and what would it take to overturn a Mayoral veto?

For example, Condition No. 3 says, "Complete DROP cost neutrality study. The Mayor has completed a DROP cost neutrality study..." Could anyone other than the Mayor, including the City Council, provide documentation to the City Auditor that indicates this study has been completed?

Given the time sensitivity related to these questions, we would appreciate it if you could respond by September 13, 2010.

cc: Mayor Jerry Sanders and City Councilmembers
Andrea Tevlin, Independent Budget Analyst